



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPTIMUM REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

Only the landlord attended the hearing and provided evidence that he served the Application for Dispute Resolution by registered mail but also in person at the time of doing the condition inspection report. It was verified online that the Application/Notice of Hearing was available for pickup but after notices were left, the mail was returned. I find the tenant is legally served with the documents. The hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 7, 44, 45 and 67 for rental loss due to the breach of a fixed term lease;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

The tenant had a fixed term lease expiring June 30, 2016. The tenant vacated before the end of the fixed term. Is the landlord now entitled to a Monetary Order for rental loss and filing fee?

Background and Evidence:

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The evidence is that the tenancy commenced July 1, 2015 on a fixed term lease expiring June 30, 2016. A security deposit of \$1150 and a pet damage deposit of \$1150 were paid and rent is \$2300 a month. The tenant's cheque for November 2015 was stopped and the landlord served a Notice to End Tenancy. She vacated on December 2, 2015 and completed a Condition Inspection Report with her new address.

The landlord is claiming the rental arrears of \$2300 for November and rental loss of \$4600 for December 2015 and January 2016 plus his filing fee. He said he has diligently tried to re-rent the unit by advertising on the company website and the internet. He has had some applicants view the unit but it is a bad time of year and no

one wanted to move over the holiday period. The tenant submitted no documents to dispute the amount owing.

In evidence is a tenancy agreement, a condition inspection report, a bank ledger statement, registered mail receipts and a warning letter from the landlord regarding the consequences of stopping payment and breaking the lease.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Sections 44 and 45 of the Act provide that a fixed term lease expires at the end of the fixed term. I find the tenant breached her fixed term lease by vacating before the end of the term and not paying rent. I find the landlord's evidence credible that he has tried diligently to re-rent the unit to mitigate his loss but he has been unsuccessful. Section 67 of the Act provides if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. I find the landlord entitled to recover his losses of \$2300 for each month from November when rent payment was stopped to January 2016. This totals \$6900 (\$2300 x3).

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent arrears and loss Nov. 2015-Jan. 2016	6900.00
Filing fee	50.00

Less deposits	-2300.00
Total Monetary Order to Landlord	4650.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 07, 2016

Residential Tenancy Branch

